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In the Supreme Court

OF THE

United States

OCTOBER TERM 1954

No. 357

CIRACO MANEJA, ANTONE VIERRA, TADAO WATANABE, KOICHI OKOUCHI, TSURUO HAYASHI, CORNELIO ASUNCION, ROQUE CRISOSTOMO, PETER HOLMBERG, HATSUSUKE SERA, TAKUMI OKOUCHI, PEDRO DUMLAO, BERNABE HERNANDEZ, DOMINGO GUIGUI, USHINOSUKE KONDO, TERUICHI KUBO, MASAIKI OATO, SIMON CUMLAT, APOLONIO LAZO, GICHI HAMAMOTO, DIONICIO CARRIT, SERAPHINE ROBELLO, TISHIO TANAKA, BARNEY FARIA, FUMIO SUNAHARA, HIROSAKU TAKATA, ALFRED REYHER, MASARU EZAWA, DAMASO CLAUNAN, ANTONE ROBELLO, YOSHIJI YAMADA, EDWIN MORI, GENJIRO HIRONAKA, JIRO SAKAI, MARGARET FUJIWARA, LOUIS PACHECO, YUKISHIGE TSUTSUI, YACK CHUN LEE, EIKO SAKAGUCHI, MOSES FERNANDEZ, and TOSHIO KASHIWABARA,

Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

Petitioners, forty in number, respectfully pray that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on May 5, 1954.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court of Hawaii (hereinafter referred to as the trial court) is reported at 97 F. Supp. 198. The opinion of the United States Court of Appeals for the Ninth Circuit, *reversing* the judgment of the trial court, is as yet unreported. The opinions delivered in the courts below are separately printed in the Appendix, pp. 1-108.[1]

JURISDICTION.

The judgment of the Court of Appeals was entered on May 5, 1954. A petition for rehearing was not filed by petitioners.[2] An order extending, until September 22, 1954, the time within which to file this petition was entered by Mr. Justice Black on July 13, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[1]Prior opinions of the courts below dealing with this case are reported at 77 F.Supp. 480 and 178 F.2d 603.

[2]A petition for rehearing filed by respondent on June 2, 1954, was denied with a brief opinion on June 24, 1954 (Appendix, pp. 107-108).

QUESTION PRESENTED.

Petitioners are employees of respondent, a corporation which engages in Hawaii in the large-scale production of sugar cane, its manufacture there into raw sugar, its exportation from there to the mainland where it is refined and marketed from a plant in California operated by a cooperative association of which respondent and thirty other Hawaiian sugar producing companies are the sole members.

The question presented is whether, and to what extent, respondent is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. 201, *et seq.*) Directly embraced in this question is the correctness of the holding of the court below that none of the petitioners was engaged in commerce or the production of goods for commerce and of the subsidiary ruling that the "agriculture" exemption deprived each petitioner of the statutory right to overtime compensation.[3]

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[3]The trial court's ruling that the "processing" exemption of Section 7(c) of the Act applied only to the place where and at the time which processing was actually taking place involves eight petitioners (Hernandez, Dum' o, Kondo, Cumlat, Lazo, Kubo, Hamamoto, Oato). Its ruling that an employee who performed some exempt and some non-exempt work in a given workweek was covered by the Act for that week also involves some of the other petitioners. The trial court did not pass upon either of these rulings (Appe[illegible]x p. 105, n. 45).

Against the contingency that respondent will urge in opposition that the judgment of the trial court is in error upon both of these grounds, and in order to support their contention that neither of these grounds presents a question which would be an obstacle to the ultimate affirmance by this Court of the trial court's judgment, petitioners will argue here, if the writ is granted, that the

STATUTE INVOLVED.

This case involves, *inter alia*, the following sections of the Fair Labor Standards Act of 1938: Sections 3(b), 3(f), 3(j), 7(a), 7(c), 13(a)(6), and 16(b). These provisions are set forth in full in the Appendix, pp. 109-111.[4]

STATEMENT.

This case was begun in July of 1947 by respondent, for a judgment declaring its obligations under the foregoing provisions of the Act. The jurisdiction of the District Court was invoked because a question arose under a law relating to commerce, the Fair Labor Standards Act. The complaint named as defendants certain employees of Waialua (among them petitioners), and "others similarly situated", and the labor union which was the collective

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trial court correctly applied the law to the facts on both these points.

Its view of the scope of the processing exemption is sustained not only, as it pointed out (97 F.Supp. at 23; Appendix p. 56) by the "long-established view of the Administrator," but also by *Maisonet v. Central Coloso, Inc.*, 2 W.H. Cases 753 holding that the processing exemption does not apply to employees engaged in the construction, repair and preparation of a sugar plant in readiness for the next season. See also *Domenech v. Cities Delivery Express, Inc.*, 2 W.H. Cases 516.

Its view that an employee is entitled to the benefits of the Act during any week in which he performs "commingled" work appears to be required by *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572, to be supported by an unbroken line of lower court decisions (*Anderson v. Manhattan Lighterage Corporation*, 148 F.2d 971, cert. denied 326 U.S. 722; *Wabash Radio Corporation v. Walling*, 162 F.2d 391), and to be consistent with the Administrator's views. (Interpretative Bulletin No. 14, 1944 W.H.Man. 560, 574.)

[4]The statutes are set out in the Appendix as they existed during the period of time here involved.

bargaining representative of those employees. The employees (including petitioners) answered and also filed a cross-complaint under Section 16(b) of the Act, to recover for themselves and "others similarly situated" unpaid overtime compensation, liquidated damages, costs, and attorneys' fees.

The issues raised by the pleadings concerned the scope of the "agriculture" exemption contained in Section 13(a)(6) of the Act, and of the "sugar processing" exemption contained in Section 7(c). After the trial,[5] the District Court held that, with certain exceptions, the overtime provisions of the Act applied to the defendant employees (77 F. Supp. 480).

On Waialua's appeal, the Court of Appeals (178 F. 2d 603):

(a) Questioned the appropriateness of an action in declaratory relief or of a representative or class suit;

(b) Held the findings were inadequate as to the precise activities of the individual employees and their connection, if any, with interstate commerce, and as to the exact hours and work weeks involved; and

(c) Remanded the cause for further proceedings.

Waialua's petition for a writ of certiorari was denied (339 U.S. 920).

Upon the remand, and in conformity with the decision of the Court of Appeals, the pleadings were amended to eliminate the class action aspects of the case, and the

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[5]By stipulation the trial was limited to the issues raised by the complaint and answer; the trial of the issues raised by the cross-complaint and the answer thereto was deferred.

union was dismissed as a party defendant. The number of defendants was reduced to forty-two, and the period in controversy was limited to the time between November 20, 1946 and September 14, 1947. This time the issues raised by the cross-complaint were also tried, petitioners seeking money judgments for unpaid compensation for work in excess of forty hours per week. Respondent sought to avoid the statutory provisions for overtime pay, claiming that it was exempt from these obligations by virtue of Sections 13(a)(6) and 7(c) of the Act.

The record made at this second trial consisted of the testimony of twenty-two of the employees involved and of respondent's general manager, and also of a comprehensive stipulation of facts entered into by the parties. The stipulation set forth in great detail the various and varied operations of respondent, and the tasks performed by each employee involved in connection therewith, hour by hour and week by week during the period involved. The respondent's manager testified as to the departmentalized nature of the business and generally substantiated the stipulation. The employees testified concerning the work performed by them personally in the vast enterprise conducted by respondent.

Thereafter, detailed findings of fact were made (97 F.Supp. at 201-218; Appendix, pp. 2-43), the court below saying of them:

> "The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question." (Appendix, p. 89.)

These findings reveal that:

Waialua was the third largest producer of raw sugar in Hawaii, the Territory itself producing during the years 1941 through 1945 between 10% and 13% of the world supply. During 1945, Waialua produced over 56,000 tons of raw sugar. At the time of trial it was producing sugar cane on 9663 acres of land, all owned by it. There were 1144 persons in its employ on September 1, 1946.

To transport the sugar cane to the plant where it was manufactured into raw sugar, Waialua used its own modern railroad system consisting of 56 miles of railroad track, 10 locomotives, and 712 cane cars. A complete roundhouse was maintained for servicing this equipment.

The manufacturing plant and mill was highly mechanized, consisting of a cleaning plant, a crushing room, a boiling room, and a bagging room. This plant was located in a yard area separate and distinct from the growing fields. During the approximately three months of each year when the plant was closed down for repairs to machinery, no processing operations were conducted.

Waialua also maintained complete and physically separate warehouses and shops for the repair and overhaul of field equipment, mill equipment, and equipment used in servicing Waialua Village, the town maintained by respondent to house its employees.[6] The shops included a

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[6]At the time of trial, the village consisted of 820 houses, all owned by respondent, together with business establishments necessary to serve the community. On the basis of a census which was completed June 30, 1946, the 820 houses on the plantation were occupied by 3373 persons. Of the 969 non-supervisory employees

machine shop, a welding shop, a blacksmith shop, a tinsmith shop, a shop for the repair of cane-loading machines, a tractor, repair shop, a garage, an electric shop, a carpenter shop, a paint shop, and a plumbing shop. The men employed in these activities were qualified machinists, welders, electricians, painters, carpenters, etc., devoting their full time to their crafts. A separate plant was also engaged solely in the production of concrete products used in the fields, mill and village.

Waialua's operations, as reflected by its financial, accounting, cost and personnel records, had long been divided into the following separate departments, each performing specialized production functions:

1. Field Department—having to do with the growing of cane and delivering it to the railroad cars.

2. Factory Department—having to do with the manufacture of cane into raw sugar.

3. Service Department—having to do with railroad and truck transportation and the various repair shops.

4. Village Facilities Department—having to do with the upkeep and maintenance of Waialua Village.

In addition there were a number of smaller departments such as office, laboratory, agricultural control, etc.

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in Waialua's employ at the time of trial, all but 16 lived in the village. All of the 22 employees who testified at the trial lived in Waialua Village. Two of them were born there and had never lived any place else. The employees paid for and received housing, housing maintenance, water, fuel, medical care, recreational facilities, and various maintenance services (including garbage disposal and street cleaning).

The work of Waialua's employees consisted of the following:

1. Preparation of the soil for the planting of sugar cane, irrigating, harvesting, and hauling the sugar cane to the main line tracks for loading into railroad cars. Employees performing only these tasks were held by the trial court to be excluded from the coverage of the Act as "agricultural" workers, and none of them are involved in this petition.

2. Loading the sugar cane into railroad cars, operation and upkeep of the railroad system, and unloading the cars at Waialua's processing mill. For example, petitioner Holmberg was a locomotive engineer devoting his full time to this craft, except for a few hours spent in repairing the railroad equipment. Petitioner Sera was a section hand on the railroad. Petitioner Okouchi was a flagman at railroad crossings, and also did maintenance work along the railroad right of way.

3. Operation of the machinery at the cane processing mill where the cane was manufactured into raw sugar for shipment to the mainland refinery, and the repair and replacement of the mill machinery during the annual three months shutdown period. For example, petitioner Oato operated one of the evaporator stations in the mill and engaged in mill repair work during the period the mill was shut down.

4. Production of steam and electricity for use in the processing mill, the fields, and Waialua Village. For example, petitioner Robello engaged solely in the operation and maintenance of Waialua's power plant.

5. Working as mechanics, carpenters, welders, blacksmiths, tinsmiths, electricians, painters and plumbers engaged in the maintenance of field, mill and village installations and equipment. For example, petitioners Claunan and Ezawa were mechanics engaged solely in mechanical repair work. Petitioner Sunahara was a welder attached to the welding shop. Petitioner Tanaka was a machinist working solely in the machine shop machining parts for all types of field, transportation, mill and village equipment maintained by respondent. Petitioner Takata was a blacksmith working as such on all types of equipment. Petitioner Sakai was a painter, Kashiwabara a plumber, Mori a carpenter.

6. Working as chemists, clerks and laboratory technicians in connection with the horticultural and manufacturing activities of the respondent. Petitioner Pacheco was employed in the laboratory preparing cane leaves for chemical analysis under the supervision of a chief chemist.

7. Working as carpenters, wood cutters, janitors, street cleaners, road graders and other service personnel in connection with the maintenance of the respondent's town. Petitioner Yamada was attached to the carpenter shop and repaired dwellings in the village. Petitioner Crisostomo operated and repaired a grader used to maintain village roads. Petitioner Fernandez was a village cleaner working on the maintenance and upkeep of employees' houses in the village.

Petitioners constitute a cross-section of all of Waialua's employees engaged in the foregoing activities, except those engaged solely in the work of the Field Department.

After making these detailed findings of fact, and appropriate conclusions of law based thereon, the trial court held, in substance, as follows:

1. That each of the employees was, while engaged in any of the foregoing activities, "engaged in commerce or in the production of goods for commerce", as defined by Sections 3(b) and 3(j) of the Act (97 F.Supp. at 218-219; Appendix, pp. 43-46).

2. That those of the employees who were engaged, directly or indirectly, in planting, irrigating, or preparing the soil for planting, or in harvesting, or in hauling the sugar cane from the fields to the corporation's main line railroad tracks, were exempt from the provisions of the Act because engaged in "agriculture" within the meaning of Section 13(a)(6) of the Act (97 F.Supp. at 219-220; Appendix, pp. 46-48). For this reason the claims of a number of employees to overtime compensation were denied. These employees did not appeal to the Court of Appeals. The judgment as to them became final and they are not involved in this petition.

3. That those of the employees while, and to the extent they were engaged in the refining process at and in the mill, were subject to the processing exemption of Section 7(c) of the Act (97 F.Supp. at 222-23; Appendix, pp. 53-56). For this reason, an additional number of employees were denied overtime compensation during work weeks in which they were so engaged.[7] These employees did not

[7]However, the trial court refused to hold that the agriculture exemption applied to these employees.

appeal to the Court of Appeals; however, Waialua did, urging that the basis of exemption should have also been Section 13(a)(6).[8]

4. That those employees performing the other types of work heretofore described were entitled to receive overtime compensation in accordance with the provisions of the Act (97 F.Supp. at 218 ff.; Appendix, p. 43 ff).

5. In those instances where an employee, in a particular work week, performed some exempt and some non-exempt work, the court held that he was entitled to the benefits of the Act for such work week (97 F.Supp. at 232; Appendix, pp. 77-79).[9]

A money judgment was entered in favor of those employees held entitled to overtime compensation in amounts ranging from $30.94 to $174.12 and equivalent amounts as liquidated damages under 16(b) of the Act (totaling $6,729.02). Attorneys' fees in the sum of $2500 were also assessed.

Waialua appealed.

The court below reversed because of error in "approach", holding that *none* of the petitioners was entitled to the benefits of the Act, because none of them engaged in "commerce or in the production of goods for com

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[8]The question of which is the appropriate exemption is therefore still in the case as to eight petitioners. See p. 3, n. 3.

[9]Cf. *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572, 579, and the "imposing array" of lower court decisions to the same effect cited in the trial court's opinion (97 F.Supp. at 232).

merce" (Appendix, pp. 83 ff.),[10] and also said further that *all* of the petitioners were excluded under the "agriculture" exemption of Section 13(a)(6) of the Act.

SPECIFICATION OF ERRORS TO BE URGED.

The court below erred:

1. In holding that none of the petitioners was engaged either in commerce or in the production of goods for commerce.

2. In holding that the "agriculture" exemption deprived each petitioner of the statutory claims to overtime compensation.[11]

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[10]This was in the face of allegations and admissions in respondent's pleadings that all of the petitioners except those engaged in the upkeep and servicing of Waialua Village were engaged in "commerce or the production of goods for commerce."

[11]Petitioners concede the correctness of the trial court's holding that those employees engaged directly or indirectly in preparing the soil for planting, planting, irrigating, harvesting and hauling the sugar cane from the fields to the railroad cars were engaged in "agriculture" as defined by the Act and therefore exempt from its provisions. They also concede the correctness of its holding that the mill workers, during processing operations, come within the Section 7(c) (processing) exemption of the Act.

REASONS FOR GRANTING THE WRIT.

I. THE HOLDING OF THE COURT BELOW THAT NONE OF PETITIONERS WAS ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE CANNOT BE SUSTAINED.

A. This holding is in conflict with prior decisions of this Court.

Notwithstanding the undisputed evidence, including the stipulation of the parties,[12] that the end product of the work of petitioners, namely, raw sugar, was all shipped from Hawaii to the mainland, the court below, reversing the findings of the trial court, held that none of the petitioners was engaged in commerce or in the production of goods for commerce.

The categorical assertion of the court below that "* * * agriculture is not commerce * * *, nor does agriculture affect such commerce in the constitutional sense" (Appendix, p. 99) cannot be squared with the decisions of this Court. The reliance of the court below (Appendix, p. 99, n. 32) upon *United States v. Butler*, 297 U.S. 1, is vitiated by its own implied recognition immediately thereafter (*id.*) that the later case of *Wickard v. Filburn*, 317 U.S. 111, is to the contrary. Even before the *Wickard*

[12]This stipulation dealt with evidentiary matter and based upon it, as well as the testimony of witnesses, the trial court made its findings of fact and conclusions of law. It was not, as the Court of Appeals erroneously believed (Appendix pp. 86, 93), a stipulation going to ultimate "constitutional" facts. Stipulations as to facts, particularly in complex Fair Labor Standards Act cases, have long been received as appropriate (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 725; *Puerto Rico Tobacco Marketing Corporation v. McComb*, 181 F.2d 697, 698), and "concessions" respecting commerce coverage (*Kirschbaum v. Walling*, 316 U.S. 517, 519; *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755, 758) and "agreements" respecting the scope of the agriculture exemption (*Bowie v. Gonzalez*, 117 F.2d 11, 17) have been accepted without question.

case, and despite the fact that the *Butler* decision was urged upon it, this Court held in *Mulford v. Smith*, 307 U.S. 38, that marketing of tobacco in excess of established quotas (and therefore its production) could be controlled by Congress in the exercise of its commerce power.[13]

It is therefore insupportable to hold, as the court below did, that petitioners, who are not farmhands, but are full time locomotive engineers, flagmen, railroad maintenance workers, mill workers, plumbers, carpenters, welders, electricians, power plant operators, laboratory technicians, and clerical workers, were not engaged in commerce or in the production of goods for commerce.[14]

Such a holding is flatly contrary to the record, is in conflict with the clear language of the statute,[15] and flies

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[13]Lower federal courts, both in and out of the Ninth Circuit, have had no difficulty in finding the Act applicable to employees of employers engaged in such activities as the dehydrating of alfalfa (*Wyatt v. Holtville Alfalfa Mills*, 106 F.Supp. 624) and the curing and packing of tobacco (*Durkin v. Budd*, 114 F.Supp. 865).

[14]Apparently the court below is entirely out of sympathy with the statute which this Court has said is "remedial and humanitarian in purpose" (*Tennessee C. I. & R. Co. v. Moscoda Local 123*, 321 U.S. 590, 597). On two occasions the court below calls the Congressional enactment "drastic" (Appendix pp. 84 and 97.) On another occasion the court below refers to the Act as "federal bureaucratic control" (Appendix p. 105).

[15]Section 3(b) of the Act defines commerce as "trade, commerce, transportation, transmission, or communication among the several states or from any state to any place outside thereof."

Section 3(c) reads:

> "'State' means any State of the United States or the District of Columbia or any Territory or possession of the United States."

Section 3(j) read, at the time herein involved:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purpose of this chapter an employee shall be deemed

directly in the face of this Court's decisions.[16] In the landmark cases involving this statute, this Court gave the statutory definition of commerce a scope sufficiently broad to enable the legislation to meet the evil which Congress sought to remedy (*United States v. Darby*, 312 U.S. 100; *Kirschbaum v. Walling*, 316 U.S. 517; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564). These rulings have been followed in cases dealing with employees of meat processors (*Rutherford Food Corporation v. McComb*, 331 U.S. 722), and of cooperative irrigation companies furnishing water to farmers (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755).[17]

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to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

[16]That part of the holding of the Court of Appeals, affecting a small minority of employees, that the village service workers were not "engaged in commerce or in the production of goods for commerce", is, petitioners concede, not directly contrary to any specific decisions of this Court. However, in *Borden Company v. Borella*, 325 U.S. 679, this Court held engaged in commerce for the purposes of the Act elevator operators and other service employees in a 24-story office building largely occupied by a manufacturer shipping goods in interstate commerce. A logical application of this Court's reasoning in that case should result in a holding that the Waialua Village workers here involved are also engaged in commerce for the purposes of the Act. To the same effect are *Kirschbaum v. Walling*, 316 U.S. 517; *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697; *D. A. Schulte, Inc. v. Gangi*, 328 U.S. 108.

[17]The court below appears to doubt the soundness of this Court's decision in the *Farmers Reservoir* case, *supra*.

"It is true that the majority [of the Supreme Court in the *Farmers Reservoir* case] unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a 'process or occupation necessary

This Court, in dealing with the analogous Agricultural Adjustment Act, 52 Stat. 31, 7 U.S.C. 1281, et seq.,[18] has held that the employees of growers of tobacco and wheat are engaged in interstate commerce (*Mulford v. Smith*, 307 U.S. 38; *Wickard v. Filburn*, 317 U.S. 111). Similarly, in dealing with the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U.S.C. 601 et seq., this Court has held employees of milk processors to be engaged in interstate commerce (*United States v. Wrightwood Dairy Co.*, 315 U.S. 110).

B. This holding is directly contrary to decisions of another Court of Appeals involving the same industry and types of work.

In *Bowie v. Gonzalez*, 117 F.2d 11, the Court of Appeals for the First Circuit held that employees of employers who grow sugar cane in Puerto Rico, who operate mills in which the cane is ground, and who deliver the ground

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for the production of goods for commerce.' Thereby the longstanding principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results." (Appendix p. 101.)

Whatever this last sentence may mean, it is clear that the court below was in error in suggesting that this Court abandoned a "principle of decision" in the *Farmers Reservoir* case. (See supra, p. 14, n. 12). And even if it thought it were not in error on the point, it should not have undertaken in effect to reverse this Court's decision.

[18] "The Fair Labor Standards Act . . . is part of the social legislation of the 1930's of the same general character as the National Labor Relations Act . . . and the Social Security Act . . . Decisions that define the coverage of the employer-employee relationship under the Labor and Social Security Acts are persuasive in the consideration of a similar coverage under the Fair Labor Standards Act." (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 723.)

cane for transportation to points outside of Puerto Rico, are engaged in interstate commerce. In fact, that court said that the proposition that such workers are engaged in commerce "is too clear for argument" (117 F.2d at 15).

The same court later had "no difficulty in holding that insofar as the employees are engaged in the transportation of sugar cane from the farm * * * and are engaged in the repair and maintenance of transportation facilities, they are covered by the Act" (*Calaf v. Gonzalez*, 127 F.2d 934, 936).

C. This holding is in conflict with the construction of the Act adopted by, and the long established enforcement policy of the Department of Labor.

In Interpretative Bulletin No. 1 issued shortly after the Act was passed in 1938, the Administrator considered the general coverage of the statute (1944 W.H.Man. p. 16).

After reciting the congressional declaration of policy[19] the Administrator said:

> "From this declared policy of Congress, it is evident that, apart from certain specific exemptions enumerated later in the statute, Congress intended the widest

[19] "In the preliminary declaration of policy in Section 2, Congress recited that it sought to remedy certain evils, namely, 'labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers,' which Congress found '(1) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.'" (1944 W.H.Man. at 17.)

possible application of its regulatory power over interstate commerce; and the Administrator, in interpreting the statute for the purpose of performing his administrative duties, should properly lean toward a broad interpretation of the key words, 'engaged in commerce or in the production of goods for commerce.'" (1944 W.H.Man. at 17.)

As we have seen, this Court in the cases which subsequently came to it confirmed the Administrator's interpretation of the scope of the commerce provisions of the Act.[20]

The departure of the court below from these salutary principles of statutory interpretation in this significant field of labor relations is plainly of importance to the administration of the statute and indicates the propriety of this Court's review.

II. THE HOLDING OF THE COURT BELOW THAT EVERY PETITIONER WAS EMPLOYED IN AGRICULTURE AND THEREFORE WAS DEPRIVED OF THE OVERTIME COMPENSATION PROVISIONS OF THE ACT CANNOT BE SUSTAINED.

As we have seen, petitioners include railroad workers, welders, machinists, blacksmiths, carpenters, chemists, and the like. Yet despite the nature of their employment, and contrary to the specific findings of the trial court, the court below held them all to fall within the exemption for agricultural workers and held that they were not entitled to the benefits of the statute.

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[20]Supra, pp. 15-17.

A. This holding is in conflict with prior decisions of this Court.

In *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, this Court held that the employees of an irrigation company mutually owned by a group of farmers and engaged in furnishing water exclusively to those farmers, were not subject to the agriculture exemption. It was pointed out that whether a particular activity is agricultural in nature depends upon the type of economy in which the activity is organized and carried out:

> "Whether a particular type of activity is agricultural depends in large measure, upon the way in which that activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. *In this way functions which are necessary to the total economic process of supplying an agricultural product, become, in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it.* Thus, the question as to

> whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function *or is separately organized as an independent productive activity.* The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. *But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by the farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture.*" (337 U.S. at 761.)

Respondent's operations in Hawaii constitute a classic example of the specialized development of the separate productive functions thus referred to by this Court. The court below therefore erred in failing to apply to the facts of this case, the principles laid down by this Court in the *Farmers Reservoir* case.

B. This holding is in conflict with the decisions of another Court of Appeals involving the same industry and types of work.

In *Bowie v. Gonzalez*, 117 F.2d 11, the Court of Appeals for the First Circuit held that employees similarly situated to petitioners here, were covered by the Act. There the employers operated sugar mills in Puerto Rico in which they crushed sugar cane grown both by them and other growers. They contended that employees who were engaged in transporting the cane to the mills, in processing the cane at the mills, and in transporting the raw

sugar to storage and marine terminals, were agricultural workers and thus were excluded from the minimum wage provisions of the Act. In a carefully reasoned opinion the court rejected this contention, saying:

> "* * * Being a remedial statute, the appellants must bring themselves within both the letter and spirit of the exceptions since they are subject to a strict construction. *Fleming v. Hawkeye Pearl Button Co.*, supra; cf. *Morris Canal Co. v. Baird*, 1915, 239 U.S. 126, 36 S.Ct. 28, 60 L.Ed. 177; *Citizens Bank v. Parker*, 1904, 192 U.S. 73, 85, 24 S.Ct. 181, 48 L.Ed. 346.
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> * * * * * * *
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> "The appellants contend that their employees engaged in the production and transportation of raw sugar are engaged in 'agriculture' within the meaning of Section 13(a)(6) and Section 3(f) and are thus entirely exempt from the Act. It is agreed by both parties that those employees engaged in the production and harvesting of sugar cane are clearly engaged in agriculture. The only dispute involved those employees engaged in the mills and the transportation facilities. It is our opinion that the latter are not engaged in 'agriculture' as defined in the statute." (117 F.2d at 16-17.)[21]

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[21]This same case came before the court a second time in *Gonzalez v. Bowie*, 123 F.2d 387, on an appeal by the employees who contended that the District Court erred in its holding on the remand that certain of the employees engaged in transporting the employers' sugar cane to the employers' mills were employed in agriculture. The Court of Appeals refused to review this ruling of the District Court for the reason that the District Court had made the same ruling in its first decision and that the employees had not appealed therefrom. That, of course, is not true here. In any event, whatever confusion may have been created by the second *Bowie* opinion as a result of this situation, was clarified by the subsequent decision of the same court in *Calaf v. Gonzalez*, 127 F.2d 934, which is discussed in the text, *infra*, pp. 24-27.

The court carefully distinguished between the "production" of agricultural products, which falls within the exemption, and the subsequent "processing" of such products which does not.

> "The grinding and processing operation through which the sugar cane goes results in the production of raw sugar. Such an operation is similar to the milling of wheat into flour and the making of cider from apples. These operations are clearly the processing of agricultural products and not the production of them. That this was the understanding of Congress is made abundantly clear by the discussions relative to the bill prior to enactment. See 81 Cong. Rec. 7877-7878." (117 F.2d at 17.)[22]

The reasoning of the court below that the processing of cane into raw sugar comes within the "agriculture" exemption is clearly in direct conflict with this language from the *Bowie* opinion.

The Court of Appeals for the First Circuit further fortified its conclusion by a consideration of the purposes of the statute.

> "Furthermore, it would seem that the employees involved in this case would not fall within the reason

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[22]The court also said:

> "The production of raw sugar is not the preparation of an agricultural commodity in its 'raw or natural state'. It is similar to extracting cider from apples, which was said to be a processing operation and not intended by Congress to be within the provisions of Section 13(a)(10." (117 F.2d at 19.) The court quoted extensively (117 F.2d at 19, n. 6) from the legislative history (81 Cong. Rec. 7877-7878) to support its view.

In its opinion here, the court below took quite a contrary view on the question of whether the making of cider from apples, for example, is within the exemption. (Appendix p. 104.)

for the exemption which was accorded to agricultural employees. The Act was drawn not to include the latter because agricultural labor was not subject to the usual evils of sweatshop conditions of long hours indoors at low wages. Also any attempt to regulate agricultural wages would present a difficult problem since a substantial part of the agricultural workers' income must of necessity be for board and room. The employees in the instant case are typical factory workers or laborers engaged in maintaining industrial facilities. The exemption of the Act is not admissible as an argument to exempt labor in an industry from its operation." (117 F.2d at 18.)

The views so expressed in the *Bowie* opinion are in harmony with this Court's declaration on the point:

"The latter statute, it has been held repeatedly, is to be broadly and liberally applied, in order to achieve its prime objects of distributing and raising standards of employment and living. The Act however contains certain exempting provisions, which are to be narrowly construed in the light of and in order to accomplish the same statutory purposes." (*Levinson v. Spector Motor Service,* 330 U.S. 649, 686.)

In *Calaf v. Gonzalez,* 127 F.2d 934, the Court of Appeals for the First Circuit was presented with the further question:

"* * * whether the employees who are engaged in the *transportation* of sugar cane from the farms of the defendants, who are the joint owners of the farms, the mill, and the railroad system, and the employees who are engaged in *the repair and main-*

> *tenance of such transportation facilities* are covered by the Act." (127 F.2d at 936.)

While the court could have rested its holding that such employees were covered by the Act upon the narrow ground that it was impossible to segregate the operations performed directly for the employer from those performed for others, it refused to do so.

> "* * * we place our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather than to farming and therefore it is not exempt under the Act." (127 F.2d at 936.)[23]

The same underlying considerations as motivated the decision in *Bowie v. Gonzalez*, 117 F.2d 11, were here present.

> "The scheme of the Fair Labor Standards Act of 1938 is broad and comprehensive with the purpose of including all employees engaged in interstate commerce or in the production of goods for commerce, except those specifically exempted. The Act is remedial in its nature and should be liberally construed and the exceptions to the coverage of the Act should be narrowly construed." (127 F.2d at 937.)

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[23]In *Vives v. Serralles*, 145 F.2d 552, the same court held that workers on outlying farms engaged in hauling sugar cane to railroad "concentration points" were exempt under Section 13(a)(6). However, the court expressly affirmed its decision in *Calaf* and stated that if the precise question were before it, it would hold that the employees *on the railroad* were not embraced within the exemption.

> ". . . we would hold the concentration points as the line of demarcation between 'transportation as an incident to milling' and 'transportation as an incident to farming.'" (145 F.2d at 555.)

In the case of Waialua, the "concentration point" is the same, that is, the point where the raw sugar is deposited alongside the main line railroad for transportation to the manufacturing plant.

In answer to the argument that the owner of the mill and transportation facilities was also the owner of the farm and that therefore the transportation to the mill was an incident to the farming rather than to the milling, the court said:

> "The mere fact that in this case the owners of the farms are also the owners of the mill and the transportation facilities does not make transportation an incident to farming. The issue, therefore, is not whether the same owners manage and control the mill, the farms and the transportation system, but rather whether transportation is incident to farming or incident to milling, an operation specifically within the purview of the Act.
>
> "It is, of course, true that it is easy to verbalize a distinction and say that transportation is incident to milling rather than to farming, but we do not lack guides to aid us in reaching our decision in the instant case. As noted, the workers are all employed by the central. Their names are found on the payroll sheets of the central. The locomotives and the cars have their depot at the mill. The locomotives and the cars move from the mill to the farms and back. The persons engaged in the transportation of sugar cane do no agricultural work. * * * We must draw a line and wherever that line is drawn may appear arbitrary but when, as here, the evidence points in the direction which we have indicated, realizing as we do the purpose of the Act and the narrowness of the exemptions, we are constrained to conclude that the transportation of sugar cane is incident to milling. What we have in the case before us is a mill engaged in the processing of sugar cane and also engaged in the transportation of that sugar cane from farms

> to the mill. There seems no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act. We, therefore, hold that all the employees before us are covered by the Act." (127 F.2d 937-938.)

The reasoning of the court below that because Waialua owned the farm as well as the railroad system and mill, it was a "farmer" and its employees were therefore to be deprived of their statutory right to overtime compensation, is directly contrary to this holding of the Court of Appeals for the First Circuit.[24]

C. This holding is in conflict with the construction of the Act adopted by, and the long established enforcement policy of, the Department of Labor.

In September of 1941, and in the light of the *Bowie* opinion, the Secretary of Labor, acting through the Administrator of the Wage and Hour Division, issued a written ruling that in the sugar industry, mill employees did not fall within the exemption of Section 13(a)(6).

> "It would seem from the court's decision that the exemption for agricultural employees provided by the Wage & Hour Law does not apply to sugar mill

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[24]The Court of Appeals for the First Circuit has also held the "agriculture" exemption not applicable to employees of employers manufacturing fertilizers sold to local farmers whose products are subsequently processed and exported (*McComb v. Super-A Fertilizer Works*, 165 F.2d 844) or to employees of a cooperative warehouse engaged in the "stemming" and subsequent handling of leaf tobacco (*Puerto Rico Tobacco Marketing Association v. McComb*, 181 F.2d 697).

employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his field." (1944-1945 W.H.Man. 564, note.)

Because of the importance of the issues here involved and the impact of this case upon thousands of sugar workers in the Hawaiian Islands, the Department of Labor has followed this litigation closely since its inception.[25] On both appeals, the Department filed briefs *amicus curiae* in support of the decisions of the trial court.[26]

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[25]The court below states in its opinion that the Department of Labor was "a bitterly partisan litigant" (Appendix pp. 86, 87, n. 11) which "took an active part not only in the trial court, but on both appeals" (Appendix p. 86). This statement is not correct. The Department of Labor took no part whatsoever in either of the trials of this action.

[26]The Department of Labor took no position one way or the other as to the applicability of the Act to the village service employees, but in all other aspects of the case, it supported the conclusions of the trial court. A certified copy of the brief of the Secretary of Labor filed as *amicus curiae* on the last appeal has been filed with the Clerk of this Court.

In that brief the Secretary said:

"As this appeal presents significant questions concerning the proper interpretation and application of the exemptions contained in Sections 13(a)(6) and 7(c) of the Act which are of importance in its general administration and enforcement, the Secretary, with leave of Court, respectfully submits this brief as amicus curiae" (Brief, p. 1).

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The position of the Department of Labor on the various issues involved is stated as follows:

"On the basis of these findings and conclusions the court below entered a judgment with which the Secretary concurs except for a minor difference noted *infra*" (Brief, p. 6).

• • •

"The Secretary of Labor and the Administrator of the Wage and Hour and Public Contracts Divisions have interpreted Section 13(a)(6) as it was interpreted by the court below except that they believe it also exempts employees exclusively engaged in repairing and maintaining equipment and facil-

The decision below also conflicts with the decisions under the analogous Labor-Management Relations Act of 1947 and predecessor statutes and is contrary to the enforcement policies of the National Labor Relations Board. *Pepecko Sugar Co.*, 59 NLRB 1532, involved the employees of another Hawaiian sugar producer whose operations paralleled those of respondent. The National Labor Relations Board there held that the agricultural exemption contained in the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. (1940 ed.) 151, *et seq.*, did not apply to employees engaged in transportation, milling, repair, and clerical work on sugar plantations.[27]

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ities used only in the performance of activities exempt under this section" (Brief, p. 9).

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"The Secretary believes the court below correctly construed the [7(c)] exemption in accordance with the terms of the statute and the previous judicial decisions" (Brief, p. 21).

• • •

"The Secretary believes that the decision below is correct in holding that an employee is entitled to the minimum wage and overtime benefits of the Act for work performed in any workweek in which he performs both exempt and covered non-exempt work" (Brief, p. 30).

• • •

"The judgment of the court below [the trial court] should be affirmed" (Brief, p. 36).

[27] "Although the term 'agricultural laborer' is not defined in the Act, its meaning is not obscure. The guidepost is the ordinary meaning of the phrase, that stemming from common usage and common understanding. The term 'agricultural laborer,' as commonly understood, refers to a person employed on a farm in the cultivation of the soil, including the harvesting of crops and the rearing and management of livestock. Only confusion results from an extension of the meaning of the phrase 'agricultural laborer' beyond its customary sense. If the Companies' argument were accepted, some anomalous conclusions would result: e.g., locomotive engineers, conductors, brakemen, engine oilers, machinists, welders, bricklayers, service station attendants, toolroom attendants, and stockroom clerks employed by the Companies would perforce become agricultural laborers." (59 NLRB at 1537.)

As recently as July of 1953 the District Court for the Territory of Hawaii held that the transportation and milling employees of this very respondent were not agricultural laborers within the meaning of the Taft-Hartley Law, 61 Stat. 163, 29 U.S.C. 141, *et seq.* (*Waialua Agricultural Co. v. United Sugar Workers*, 114 F.Supp. 243.)

The effect of the decision below is manifestly of importance to the administration of these and similar statutes and of itself invites this Court's review. (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 723.)

III. CONFUSION AND UNCERTAINTY AMONG EMPLOYERS AND EMPLOYEES ALIKE WILL ENSUE IF THIS COURT DOES NOT REVIEW AND REVERSE THE DECISION OF THE COURT BELOW.

The decision of the court below holds in effect that the employees of an employer who processes agricultural products, no matter how widespread the employer's operations and no matter over how many state lines the products travel, are not engaged in commerce and are therefore immune from any power on the part of Congress to control or regulate their affairs. If this far-reaching decision is allowed to stand in the face of prior decisions of this and other courts respecting the scope of the commerce power, widespread confusion and uncertainty among employers and employees and government enforcement agencies is bound to result.

The same result will obtain unless the other holding of the court below that chemists, electricians, locomotive engineers, mill operators, mechanics, carpenters, welders,

plumbers and the like, are "agricultural" employees, is reviewed. It is one thing to recognize that an employee's activities may have to do with the handling of a product of the soil. It is another to say that for that reason alone he is not entitled to the benefits of federal remedial legislation which appears from the legislative history, administrative interpretations, and judicial decisions, to have been passed for his protection.

CONCLUSION.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Dated, San Francisco, California,
September 17, 1954.

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